

**AMENDMENTS TO THE DRAWINGS:**

In accordance with 37 C.F.R. § 1.121(d), the attached drawing sheets, each entitled “New Sheet” or “Replacement Sheet” and included in Appendix A, include Figures 1, 1A, 2 and 3. Figure 1A is submitted as a new drawing as required by the Examiner in the Office Action. Figures 1, 2 and 3 are submitted to replace the originally-filed Figures 1, 2 and 3 and are submitted to correct sheet numbering. It is believed that no new matter is added as a result of the drawing amendments.

Attachments: New Sheet  
Replacement Sheets

### **REMARKS/ARGUMENTS**

This Amendment is submitted in response to the non-final Office Action mailed February 20, 2007. Following entry of this amendment, claims 1-15, 17, 19, 20 and 23-27 remain pending in the application. Claims 1, 3 and 23 are independent.

Initially, Applicants would like to thank the Examiner for indicating that claims 6-8, 13, 15, 19 and 21 contain allowable subject matter.

In the Office Action, the Examiner:

- withdrew the indication of allowability of claims 3 and 4 in view of U.S. Patent Application Publication No. 2005/0113909 to Shannon *et al.* (hereinafter "Shannon");
- objected to the drawings under 37 C.F.R. § 1.83(a) for failing to show every feature of the invention specified in the claims;
- rejected claim 15 under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to point out and distinctly claim subject matter which the Applicant regards as the invention because of the limitation "the second sheath";
- rejected claims 1, 2, 4, 10-12, 16, 17, 20 and 22 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,454,813 to Lawes (hereinafter "Lawes") in view of U.S. Patent No. 2,381,050 to Hardinge (hereinafter "Hardinge");
- rejected claims 3, 5, 9, 14 and 23 under § 103(a) as allegedly being unpatentable over Lawes in view of Hardinge and further in view of Shannon;
- indicated that claims 6-8, 13, 19 and 21 contain allowable subject matter and would be allowable if rewritten in independent form; and
- indicated that claim 15 contains allowable subject matter and would be allowable if rewritten to overcome the § 112 rejection and if rewritten in independent form.

As outlined above, Applicants have amended claims 1, 3, 6, 15, 20 and 23 to address the objections to the drawings, address the 35 U.S.C. § 112, second paragraph rejections, better define the scope of the invention, more clearly distinguish over the cited art, and/or conform with amendments to other claims. New claims 24-27 were added to better define the scope of the invention. Claims 16, 21 and 22 have been canceled without prejudice to their subsequent prosecution in any continuing application or disclaimer of the proprietary rights set forth therein. All amendments are fully supported by the originally-filed specification

and/or drawings of the present application. In addition, as outlined in Appendix A, the figures have been amended to include new FIG. 1A and to correct sheet numbering as a result of the new figure. Lastly, as outlined above, the specification has been amended to include reference to new FIG. 1A. It is believed that no new matter has been added as a result of the amendments to the claims, figures and specification. The amendments made herein do not represent acquiescence in the Examiner's rejections, but rather are made only to expedite prosecution of the present application and/or maintain consistency in claim language. Applicant expressly reserves the right to pursue the subject matter of any previously presented claims in one or more continuation applications. As discussed more fully below, Applicants respectfully submit that each of the currently pending claims define features that are not disclosed, taught or suggested by the prior art of record and respectfully request allowance of same.

#### **Drawing Objections**

In the Office Action, the Examiner objected to the drawings for failing to show every feature of the invention specified in the claims. Specifically, the Examiner alleges that the expansion agent including a threaded connection between the first sheath and the expansion agent, and that the device includes as second bone fixation implant as recited in claims 21 and 22, respectively, are not shown in the figures. In response, as outlined above, Applicants have canceled claim 22 and added new FIG. 1A that shows the threaded connection between the expansion agent and the first sheath. Accordingly, Applicants respectfully request that the objection to the drawings be withdrawn.

#### **Claim Rejections Under 35 U.S.C. § 112**

Claim 15 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Specifically, the Examiner asserts that there is insufficient antecedent basis for "the second sheath" limitation in line 2 of the claim. In response, as outlined above, Applicants have amended claim 15 to depend from claim 14, thereby addressing the Examiner's rejection. Accordingly, Applicants respectfully request that the § 112, second paragraph rejection be withdrawn.

**Claim Rejections Under 35 U.S.C. § 103(a)**

Claims 1, 2, 4, 10-12, 16, 17, 20 and 22 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Lawes in view of Hardinge. In addition, claims 3, 5, 9 and 23 were rejected under § 103(a) as allegedly being unpatentable over Lawes in view of Hardinge and further in view of Shannon. The rejections are traversed for at least the following reasons.

In response, as outlined above, Applicants have amended independent claims 1, 3 and 23 to include the subject matter of claim 21, indicated as allowable by the Examiner.

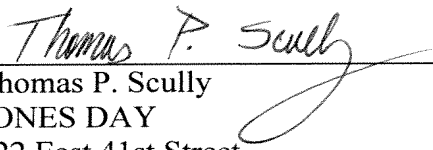
For at least the foregoing reasons, it is believed that revised independent claims 1, 3 and 23 patentably distinguish over the relied upon portions of Lawes, Hardinge and Shannon, either alone or in combination, and are therefore allowable. Further, claims 2, 4, 10-15, 17, 19 and 20, which depend from claim 1, claims 5-9, which depend from claim 3, and claims 24-27, which depend from claim 3, are allowable as well. Accordingly, Applicants respectfully request that the obviousness rejections be withdrawn, and that the pending claims be allowed.

In view of the above amendments and remarks, Applicants respectfully request that the Examiner reconsider pending claims 1-15, 17, 19, 20 and 23-27 with a view towards allowance. The Examiner is invited to call the undersigned attorney at (212) 326-3939 if a telephone call could help resolve any remaining issues.

Should any additional fees be required by reason of this Amendment, please charge such fees to Jones Day deposit account no. 50-3013.

Respectfully submitted,

Date: May 18, 2007

  
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